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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/031,826	10/28/2002	John A. Macoviak	CARDE.59410	5785
27629	7590	12/06/2004		
FULWIDER PATTON LEE & UTECHT, LLP 200 OCEANGATE, SUITE 1550 LONG BEACH, CA 90802				
			EXAMINER MENDEZ, MANUEL A	
			ART UNIT 3763	PAPER NUMBER

DATE MAILED: 12/06/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/031,826	<b>Applicant(s)</b> MACOVIK ET AL.	
	<b>Examiner</b> Manuel Mendez	<b>Art Unit</b> 3763	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL.      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-50 is/are pending in the application.  
4a) Of the above claim(s) 7-9, 13-16, 18, 20-27, 30-43 and 48-50 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6, 10-12, 17, 19, 28, 29 and 44-47 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |  |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____  |

## DETAILED ACTION

### *Election/Restrictions*

**Claims 7-9, 13-16, 18, 20-27, 30-43, and 48-50** are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse.

### *Claim Objections*

**Claim 19** is objected to because of the following informalities:

The phrase "the flow divider is formed in a concave configuration" does not provide a frame of reference to clearly define this particular feature of the invention. Appropriate correction is required.

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**Claim 1** is rejected under 35 U.S.C. 102(b) as being anticipated by **Macoviak, et al., (U.S. Patent No. 6,139,517), Helzel, or Boyles**. The cited patent discloses a fluid flow divider for dividing fluid flow within a body lumen into at least two channels, the fluid flow divider comprising a first end and a second end, a top surface and a bottom surface, and the flow divider having a deployed state wherein the flow divider divides fluid flow through the body lumen into a first flow channel and a second flow channel.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 2-6, 10-12, 17, 19, 28, 29, and 44-47** are rejected under 35 U.S.C.

103(a) as being unpatentable over **Macoviak, et al., in view of Helzel and Klein, et al.**

In view of the lack of clarity in claim 19, the examiner of record notes that Figure 14b of the Macoviak, et al., Patent shows a concave flow divider (298). However, since claim 19 does not use a frame of reference, the examiner would like to present the Klein, et al., Patent to further demonstrate the conventionality of concave flow dividers. Figures 4 and 5 show a concave flow divider in combination with an expandable balloon.

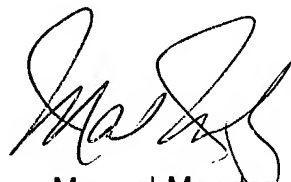
Based on the above observations, it would not be unreasonable to suggest that for a person of ordinary skill in the art, modifying elements of a catheter to include a concave flow divider would have been considered an obvious design choice.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Manuel Mendez whose telephone number is 703-308-2221. The examiner can normally be reached on 0730-1800 hrs.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Brian Casler can be reached on 703-308-3552. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3763

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Manuel Mendez  
Primary Examiner  
Art Unit 3763

MM